



01-03-2002

U.S. Patent & TMOtc/TM Mail Rcpt Dt. #22

**THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SAKATA RICE SNACKS AUSTRALIA PTY LTD.,

Opposer,

v.

SESMARK FOODS, INC.,

Applicant.

Opposition No.: 124,245

Opposed Mark: SAKATA  
Application Serial No. 78/032,358  
Filed: October 25, 2000  
Published: August 28, 2001

**ANSWER TO NOTICE OF OPPOSITION  
OF SAKATA RICE SNACKS AUSTRALIA PTY LTD.**

Terra Harvest Foods, Incorporated, formally known as Sesmark Foods, Inc., a corporation organized and existing under the laws of the State of Illinois ("Applicant"), located and doing business at 2154 Harlem Road, Loves Park, Illinois 61111-2752, answers the Notice of Opposition of Sakata Rice Snacks Australia Pty Ltd. ("Opposer"), as follows:

1. Sakata has been engaged for many years in the business of selling snack foods made of rice under the mark SAKATA throughout Australia, New Zealand, Japan and Canada.

**Response:** Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Notice of Opposition and, therefore, denies such allegations.

2. Sakata has created widespread goodwill under the SAKATA mark in Australia, New Zealand, Japan and Canada, and the public in those countries has come to recognize the SAKATA mark to signify the Opposer and the Opposer's rice snacks.

**Response:** Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Notice of Opposition and, therefore, denies such allegations.

3. At and significantly before October 25, 2000, the filing date of the Sesmark application, Sakata had adopted and has continuously used in United States commerce, as its trade name in connection with its business of distributing foods, the word SAKATA.

**Response:** Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Notice of Opposition and, therefore, denies such allegations.

4. Sakata has spent substantial sums of money publicizing, promoting and advertising its SAKATA tradename in the United States in connection with its rice snacks, which include rice cracker biscuits, rice based snack foods, rice porridge, rice dinners, and rice products; flour and preparations made from cereals, including cereal preparations in the form of bread sticks, pretzels, and chips.

**Response:** Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Notice of Opposition and, therefore, denies such allegations.

5. As a result, the tradename SAKATA had become, at and before the time the Sesmark application was filed, strongly associated with Sakata's company name and its rice snacks.

**Response:** Applicant denies each and every allegation contained in paragraph 5.

6. As of August or September of the year 2000, Sakata put the SAKATA mark into use in the United States in connection with samples of rice snacks sent to prospective distributors throughout the country.

**Response:** Applicant is without knowledge or information sufficient to form a belief as to the truth the allegations contained in paragraph 6 of the Notice of Opposition and, therefore, denies such allegations.

7. As a result, the SAKATA mark has developed valuable good will and recognition in the relevant marketplace in connection with the Opposer's rice snacks.

**Response:** Applicant denies each and every allegation contained in paragraph 7.

8. On January 4, 2001, the Opposer, in good faith and without notice of a claim of prior or superior rights, filed an application to register the mark SAKATA. The "Sakata application," which has a design element, is pending under serial no. 76/189,598, and covers *rice snacks, rice cracker biscuits, rice based snack foods, rice porridge, rice dinners, and rice products; flour and preparations made from cereals, including cereal preparations in the form of bread sticks, pretzels, and chips* in International Class 30.

**Response:** On information and belief, Applicant admits that the Opposer filed an application to register the mark SAKATA, which application is pending under serial no. 76/189,598. Applicant denies all remaining allegations contained in paragraph 8.

9. The Sesmark Application was filed by Sesmark Foods, Inc., an Illinois corporation, on October 25, 2000.

**Response:** Applicant admits the allegations contained in paragraph 9.

10. The Sesmark application, which is based on an intent to use the mark in commerce, covers "*snack foods, namely, sesame sticks and rice and sesame crackers,*" in International Class 30.

**Response:** Applicant admits the allegations contained in paragraph 10.

11. The mark shown in the Sesmark application is identical to the Opposer's tradename and mark.

**Response:** Applicant admits only that it has applied for registration of the mark, SAKATA, and that the Opposer's application, serial no. 76/189,598, includes the word, SAKATA.

12. The goods covered by the Sesmark application are substantially identical to Sakata's goods.

**Response:** Applicant responds by stating that the applications filed by Applicant and by the Opposer, respectively, speak for themselves and no response is required.

13. Sakata and Sesmark have a past business relationship.

**Response:** Applicant denies the allegations contained in paragraph 13.

14. At or earlier than October 25, 2000, Sesmark knew or should have known of Sakata's prior use of the SAKATA tradename in Australia, New Zealand, Japan, and Canada.

**Response:** Applicant admits that at or earlier than October 25, 2000, Applicant knew of the Opposer's use of SAKATA as a trade name in Australia, New Zealand and Japan. Applicant denies all other allegations contained in paragraph 14.

15. At or earlier than October 25, 2000, Sakata (sic) knew or should have known of Sakata's prior use of the SAKATA tradename in the United States.

**Response:** Applicant assumes that the Opposer intended to allege that Applicant knew or should have known of Sakata's prior use of the SAKATA tradename in the United States and on that basis denies the allegations contained in paragraph 15.

16. The mark shown in the Sesmark application, when applied to Sesmark's goods, so resembles Opposer's previously used trade name SAKATA as to be likely is likely (sic) to cause confusion, deception, and mistake.

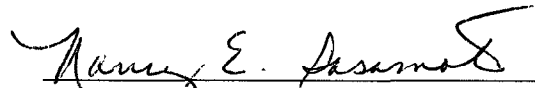
**Response:** Applicant denies the allegations contained in paragraph 16.

17. As a result, registration of the mark shown in the Sesmark application will cause damage to the Opposer.

**Response:** Applicant denies the allegations contained in paragraph 17.

WHEREFORE, the Applicant asks that the Notice of Opposition be dismissed in its entirety, that Notice of Allowance for the mark SAKATA be issued to the Applicant and that any registration which may issue on trademark application serial no. 76/189,598 be cancelled.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Nancy E. Sasamoto", is written over a horizontal line.

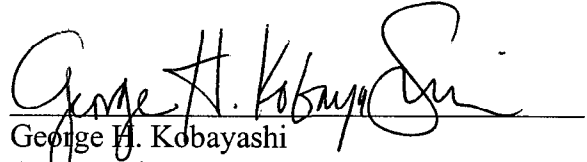
Dated: January 3, 2002

Attorneys for Terra Harvest Foods,  
Incorporated  
Joseph S. Parisi, Nancy E. Sasamoto,  
and George H. Kobayashi  
Masuda Funai Eifert & Mitchell, Ltd.  
One East Wacker Drive, Suite 3200  
Chicago, Illinois 60601  
(312) 245-7500

---

***CERTIFICATE OF SERVICE***

I hereby certify that a copy of the foregoing APPLICANT'S ANSWER TO NOTICE OF OPPOSITION was mailed first-class mail, postage prepaid, to Miller Nash LLP, 4400 Two Union Square, 601 Union Street, Seattle, Washington 98101-2352, attorneys for Opposer, this 3rd day of January, 2002.

A handwritten signature in black ink, appearing to read "George H. Kobayashi", is written over a horizontal line.

George H. Kobayashi  
Attorney for Terra Harvest Foods,  
Incorporated  
Masuda Funai Eifert & Mitchell, Ltd.  
One East Wacker Drive, Suite 3200  
Chicago, Illinois 60601  
(312) 245-7500



TAB

01-03-2002

U.S. Patent & TMO/TM Mail Rpt Dt. #22

**THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Transmitted herewith for filing is the Answer to Notice of Opposition of Sakata Rice Snacks Australia Pty Ltd. for:

Sakata Rice Snacks Australia Pty Ltd. v. Sesmark Foods, Inc.

Opposition Number: 124,245

**TRANSMITTAL LETTER AND CERTIFICATE OF EXPRESS MAILING**

To: United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, VA 22202-3513

From: Masuda, Funai, Eifert &  
Mitchell, Ltd.  
One East Wacker Drive  
Suite 3200  
Chicago, Illinois 60601-2002

Attn: Duion Walker  
Legal Assistant  
Trademark Trial and Appeal Board

Enclosed are:

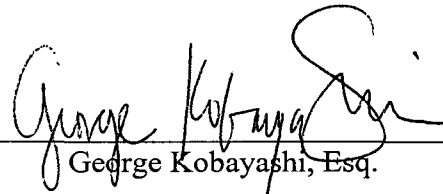
1. Transmittal letter including Certificate of Express Mailing
2. One (1) Return Postcard Receipt
3. Answer to Notice of Opposition of Sakata Rice Snacks Australia Pty Ltd.
4. Certificate of Service

**CERTIFICATE OF EXPRESS MAILING**

I hereby certify the papers listed above are being deposited with the U.S. Postal Service as Express Mail Post Office to Addressee in an envelope addressed to the United States Patent and Trademark Office, Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, VA 22202-3513, on the date indicated below.

Express Mail No. is EJ775261613US  
Date: January 3, 2002

Signature: \_\_\_\_\_

  
George Kobayashi, Esq.

mas